

AN ACT concerning health.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Preventing Youth Vaping Act.

Section 5. Definitions. In this Act:

"Additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in it becoming a component or otherwise affecting the characteristic of any tobacco product, including, but not limited to, any substances intended for use as a flavoring or coloring or in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding. "Additive" does not include tobacco or a pesticide chemical residue in or on raw tobacco or a pesticide chemical.

"Consumer" means an individual who acquires or seeks to acquire electronic cigarettes for personal use.

"Distributor" means a person who sells, offers for sale, or transfers any tobacco, electronic cigarette, or tobacco product for resale and not for use or consumption. "Distributor" includes a distributor as defined in Section 1 of the Cigarette Tax Act, Section 1 of the Cigarette Use Tax Act, and Section 10-5 of the Tobacco Products Tax Act of 1995.

"Electronic cigarette" means:

(1) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or

(3) any solution or substance, whether or not it contains nicotine, intended for use in the device.

"Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any component, part, or accessory of a device used during the operation of the device even if the part or accessory was sold separately. "Electronic cigarette" does not include: cigarettes, as defined in Section 1 of the Cigarette Tax Act; any product approved by the United States Food and Drug Administration for sale as a smoking cessation product, a tobacco dependence product, or for other medical purposes that is marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition that is marketed and sold solely for that approved purpose; any device that meets the definition of cannabis paraphernalia under Section 1-10 of the Cannabis Regulation and Tax Act; or any cannabis product sold by a dispensing organization pursuant to the Cannabis Regulation

and Tax Act or the Compassionate Use of Medical Cannabis Program Act.

"Manufacturer" means any person, wherever resident or located, who manufactures and sells tobacco products. "Manufacturer" does not include a person who makes, manufactures, or fabricates tobacco products as a part of a correctional industries program for sale to persons incarcerated in penal institutions or resident patients of a State-operated mental health facility.

"Modified risk tobacco product" means any tobacco product that is sold or distributed to reduce harm or the risk of tobacco related disease associated with commercially marketed tobacco products.

"Person" means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for-profit or not-for-profit activities.

"Retailer" means a person who engages in this State in the sale of or offers for sale electronic cigarettes for use or consumption and not for resale in any form. "Retailer" includes a retailer as defined in Section 1 of the Cigarette Tax Act and Section 10-5 of the Tobacco Products Tax Act of 1995.

"Secondary distributor" has the same meaning as defined in Section 1 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax Act.

"Tobacco product" has the same meaning as defined in

Section 10-5 of the Tobacco Products Tax Act of 1995.

Section 10. Enforcement; rulemaking.

(a) The Department of Revenue may adopt rules that are reasonable, necessary, and related to the administration and enforcement of this Act.

(b) The Department of Revenue, the Department of Public Health, a local public health department, the Department of Human Services, the Illinois State Police, a county sheriff, and a municipal police department may inspect any business that sells, manufactures, transports, or distributes electronic cigarettes in the State to ensure compliance with this Act.

Section 15. Prohibitions.

(a) It is unlawful for a person to do any of the following:

(1) To sell or distribute in this State; to acquire, hold, own, possess, or transport, for sale or distribution in this State; or to import, or cause to be imported into this State for sale or distribution in this State:

(A) any electronic cigarette with packaging that:

(i) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the electronic cigarette to be sold, distributed, or used in the United States, including, but not limited to,

labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(ii) does not comply with:

(I) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of electronic cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States; and

(II) all federal trademark and copyright laws; and

(B) any electronic cigarette that the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States.

(2) To alter the packaging of an electronic cigarette, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure any statement, label, stamp, sticker, or notice required under this Section or federal law.

(3) To affix any stamp required under this Act to the packaging of any electronic cigarettes described in subparagraph (A) of paragraph (1) or altered in violation of subparagraph (A) of paragraph (1).

(4) To adulterate an electronic cigarette for sale in

this State. An electronic cigarette is adulterated if:

(A) it consists in whole or in part of any filthy, putrid, or decomposed substance, or is otherwise contaminated by any added poisonous or deleterious substance that may render the product injurious to health;

(B) it is held or packaged in containers composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health; or

(C) it is required by 21 U.S.C. 387j(a) to have premarket review and does not have an order in effect under 21 U.S.C. 387j(c)(1)(A)(i) or is in violation of an order under 21 U.S.C. 387j(c)(1)(A).

Electronic cigarettes first sold prior to August 8, 2016 and for which a premarket tobacco product application was submitted to the U.S. Food and Drug Administration by September 9, 2020 shall not be deemed to be adulterated under subparagraph (C) of paragraph (4) of this subsection.

(b) A distributor, secondary distributor, retailer, or person who violates this Section shall be guilty of a Class 4 felony.

(c) Any violation of this Act shall be reported to the Department of Revenue within 7 business days.

Section 20. Additives. An electronic cigarette for sale in

this State shall not include the following additives:

- (1) polyethylene glycol (PEG);
- (2) vitamin E acetate; or
- (3) medium chain triglycerides (MCT oil).

Section 25. Advertising.

(a) A manufacturer, distributor, or retailer may not advertise, market, or promote an electronic cigarette as a modified risk tobacco product unless it has been designated as a modified risk tobacco product by the United States Food and Drug Administration.

(b) A manufacturer, distributor, or retailer may not advertise, market, or promote or advertise an electronic cigarette as providing smoking cessation benefits to consumers unless it has approval from the United States Food and Drug Administration to market its electronic cigarette as a medical product for such purpose.

(c) A manufacturer, distributor, or retailer may not advertise, market, or promote an electronic cigarette in a manner that includes fraudulent or misleading terms or statements.

(d) A manufacturer, distributor, or retailer may not advertise, market, or promote an electronic cigarette in a manner that:

- (1) encourages persons under 21 years of age to use an electronic cigarette; or

(2) is attractive to persons under 21 years of age, including, but not limited to, inclusion of the following:

(A) cartoons;

(B) an image, character, or phrase that is similar to one popularly used to advertise to children; or

(C) a video game, movie, video, or animated television show known to appeal primarily to persons under 21 years of age.

Section 30. Manufacturer requirements. A manufacturer shall ensure that the label on an electronic cigarette container meets the nicotine addictiveness warning statement requirements under 21 CFR 1143.3.

Section 35. Violations.

(a) Upon a finding that a distributor, secondary distributor, retailer, or person has committed any of the conduct prohibited under this Act or any rule adopted under this Act, knowing or having reason to know that he or she has done so, the Department of Revenue may: revoke or suspend the license or licenses of the distributor, secondary distributor, retailer, or person pursuant to the procedures set forth in the Cigarette Tax Act, Cigarette Use Tax Act, or the Tobacco Products Tax Act of 1995; and impose on the distributor, secondary distributor, retailer, or person a civil penalty in an amount not to exceed the greater of 500% of the retail value

of the electronic cigarettes involved or \$10,000.

(b) Electronic cigarettes that are acquired in, held in, owned in, possessed in, transported within, imported into, or sold or distributed across this State in violation of this Act shall be deemed contraband under this Act and are subject to seizure and forfeiture as provided in subsection (g) of Section 1 of the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act, and all such electronic cigarettes seized and forfeited shall be destroyed or maintained and used in an undercover capacity. Such electronic cigarettes shall be deemed contraband whether the violation of this Act is knowing or otherwise.

(c) The Attorney General may enforce violations of Section 15 or 25 of this Act as an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act.

Section 40. The Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act is amended by changing Section 1 as follows:

(720 ILCS 675/1) (from Ch. 23, par. 2357)

Sec. 1. Prohibition on sale of tobacco products, electronic cigarettes, and alternative nicotine products to persons under 21 years of age; prohibition on the distribution of tobacco product samples, electronic cigarette samples, and

alternative nicotine product samples to any person; use of identification cards; vending machines; lunch wagons; out-of-package sales.

(a) ~~No person under 21 years of age shall buy any tobacco product, electronic cigarette, or alternative nicotine product.~~ No person shall sell, buy for, distribute samples of or furnish any tobacco product, electronic cigarette, or ~~any~~ alternative nicotine product to any person under 21 years of age.

(a-5) No person under 16 years of age may sell any tobacco product, electronic cigarette, or alternative nicotine product at a retail establishment selling tobacco products, electronic cigarettes, or alternative nicotine products. This subsection does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner.

(a-5.1) Before selling, offering for sale, giving, or furnishing a tobacco product, electronic cigarette, or alternative nicotine product to another person, the person selling, offering for sale, giving, or furnishing the tobacco product, electronic cigarette, or alternative nicotine product shall verify that the person is at least 21 years of age by:

- (1) examining from any person that appears to be under 30 years of age a government-issued photographic identification that establishes the person to be 21 years of age or older; or

(2) for sales of tobacco products, electronic cigarettes, or alternative nicotine products made through the Internet or other remote sales methods, performing an age verification through an independent, third party age verification service that compares information available from public records to the personal information entered by the person during the ordering process that establishes the person is 21 years of age or older.

(a-6) No person under 21 years of age in the furtherance or facilitation of obtaining any tobacco product, electronic cigarette, or alternative nicotine product shall display or use a false or forged identification card or transfer, alter, or deface an identification card.

(a-7) (Blank).

(a-8) A person shall not distribute without charge samples of any tobacco product, alternative nicotine product, or electronic cigarette to any other person, regardless of age, except for smokeless tobacco in an adult-only facility.

This subsection (a-8) does not apply to the distribution of a tobacco product, electronic cigarette, or alternative nicotine product sample in any adult-only facility.

(a-9) For the purpose of this Section:

"Adult-only facility" means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under State law, or by

checking the identification of any person appearing to be under the age of 30) that no person under legal age is present. A facility or restricted area need not be permanently restricted to persons under 21 years of age to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no person under 21 years of age is present during the event or time period in question.

"Alternative nicotine product" means a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. "Alternative nicotine product" does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco product and electronic cigarette as defined in this Section; or any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

"Electronic cigarette" means:

- (1) any device that employs a battery or other mechanism to heat a solution or substance to produce a

vapor or aerosol intended for inhalation;

(2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or

(3) any solution or substance, whether or not it contains nicotine intended for use in the device.

"Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, ~~and~~ any components or parts that can be used to build the product or device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately. "Electronic cigarette" does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act ~~and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995;~~ tobacco product and alternative nicotine product as defined in this Section; any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and is being marketed and sold solely for that approved purpose; any device that meets the definition of

cannabis paraphernalia under Section 1-10 of the Cannabis Regulation and Tax Act; or any cannabis therapeutic product sold by a dispensing organization pursuant to the Cannabis Regulation and Tax Act or ~~approved for use under the Compassionate Use of Medical Cannabis Pilot Program Act.~~

"Lunch wagon" means a mobile vehicle designed and constructed to transport food and from which food is sold to the general public.

"Nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived.

"Tobacco product" means any product containing or made from tobacco that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, and any other smokeless tobacco product which contains tobacco that is finely cut, ground, powdered, or leaf and intended to be placed in the oral cavity. "Tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include: an ~~electronic cigarette~~ and alternative nicotine product as defined in this Section; or any product that has been approved by the United States Food

and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

(b) Tobacco products, electronic cigarettes, and alternative nicotine products may be sold through a vending machine only if such tobacco products, electronic cigarettes, and alternative nicotine products are not placed together with any non-tobacco product, other than matches, in the vending machine and the vending machine is in any of the following locations:

(1) (Blank).

(2) Places to which persons under 21 years of age are not permitted access at any time.

(3) Places where alcoholic beverages are sold and consumed on the premises and vending machine operation is under the direct supervision of the owner or manager.

(4) (Blank).

(5) (Blank).

(c) (Blank).

(d) The sale or distribution by any person of a tobacco product as defined in this Section, including but not limited to a single or loose cigarette, that is not contained within a sealed container, pack, or package as provided by the manufacturer, which container, pack, or package bears the health warning required by federal law, is prohibited.

(e) It is not a violation of this Act for a person under 21 years of age to purchase a tobacco product, electronic cigarette, or alternative nicotine product if the person under the age of 21 purchases or is given the tobacco product, electronic cigarette, or alternative nicotine product in any of its forms from a retail seller of tobacco products, electronic cigarettes, or alternative nicotine products or an employee of the retail seller pursuant to a plan or action to investigate, patrol, or otherwise conduct a "sting operation" or enforcement action against a retail seller of tobacco products, electronic cigarettes, or alternative nicotine products or a person employed by the retail seller of tobacco products, electronic cigarettes, or alternative nicotine products or on any premises authorized to sell tobacco products, electronic cigarettes, or alternative nicotine products to determine if tobacco products, electronic cigarettes, or alternative nicotine products are being sold or given to persons under 21 years of age if the "sting operation" or enforcement action is approved by, conducted by, or conducted on behalf of the Department of State Police, the county sheriff, a municipal police department, the Department of Revenue, the Department of Public Health, or a local health department. The results of any sting operation or enforcement action, including the name of the clerk, shall be provided to the retail seller within 7 business days.

(f) No person shall honor or accept any discount, coupon,

or other benefit or reduction in price that is inconsistent with 21 CFR 1140, subsequent United States Food and Drug Administration industry guidance, or any rules adopted under 21 CFR 1140.

(g) Any peace officer or duly authorized member of the Illinois State Police, a county sheriff's department, a municipal police department, the Department of Revenue, the Department of Public Health, a local health department, or the Department of Human Services, upon discovering a violation of subsection (a), (a-5), (a-5.1), (a-8), (b), or (d) of this Section or a violation of the Preventing Youth Vaping Act, may seize any tobacco products, alternative nicotine products, or electronic cigarettes of the specific type involved in that violation that are located at that place of business. The tobacco products, alternative nicotine products, or electronic cigarettes so seized are subject to confiscation and forfeiture.

(h) If, within 60 days after any seizure under subsection (g), a person having any property interest in the seized property is charged with an offense under this Section or a violation of the Preventing Youth Vaping Act, the court that renders judgment upon the charge shall, within 30 days after the judgment, conduct a forfeiture hearing to determine whether the seized tobacco products or electronic cigarettes were part of the inventory located at the place of business when a violation of subsection (a), (a-5), (a-5.1), (a-8),

(b), or (d) of this Section or a violation of the Preventing Youth Vaping Act occurred and whether any seized tobacco products or electronic cigarettes were of a type involved in that violation. The hearing shall be commenced by a written petition by the State, which shall include material allegations of fact, the name and address of every person determined by the State to have any property interest in the seized property, a representation that written notice of the date, time, and place of the hearing has been mailed to every such person by certified mail at least 10 days before the date, and a request for forfeiture. Every such person may appear as a party and present evidence at the hearing. The quantum of proof required shall be a preponderance of the evidence, and the burden of proof shall be on the State. If the court determines that the seized property was subject to forfeiture, an order of forfeiture and disposition of the seized property shall be entered and the property shall be received by the prosecuting office, who shall effect its destruction.

(i) If a seizure under subsection (g) is not followed by a charge under subsection (a), (a-5), (a-5.1), (a-8), (b), or (d) of this Section or under the Preventing Youth Vaping Act, or if the prosecution of the charge is permanently terminated or indefinitely discontinued without any judgment of conviction or acquittal:

(1) the prosecuting office may commence in the circuit court an in rem proceeding for the forfeiture and

destruction of any seized tobacco products or electronic cigarettes; and

(2) any person having any property interest in the seized tobacco products or electronic cigarettes may commence separate civil proceedings in the manner provided by law.

(j) After the Department of Revenue has seized any tobacco product, nicotine product, or electronic cigarette as provided in subsection (g) and a person having any property interest in the seized property has not been charged with an offense under this Section or a violation of the Preventing Youth Vaping Act, the Department of Revenue must hold a hearing and determine whether the seized tobacco products, alternative nicotine products, or electronic cigarettes were part of the inventory located at the place of business when a violation of subsection (a), (a-5), (a-5.1), (a-8), (b), or (d) of this Section or a violation of the Preventing Youth Vaping Act occurred and whether any seized tobacco product, alternative nicotine product, or electronic cigarette was of a type involved in that violation. The Department of Revenue shall give not less than 20 days' notice of the time and place of the hearing to the owner of the property, if the owner is known, and also to the person in whose possession the property was found if that person is known and if the person in possession is not the owner of the property. If neither the owner nor the person in possession of the property is known, the Department

of Revenue must cause publication of the time and place of the hearing to be made at least once each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing is to be held.

If, as the result of the hearing, the Department of Revenue determines that the tobacco products, alternative nicotine products, or the electronic cigarettes were part of the inventory located at the place of business when a violation of subsection (a), (a-5), (a-5.1), (a-8), (b), or (d) of this Section or a violation of the Preventing Youth Vaping Act at the time of seizure, the Department of Revenue must enter an order declaring the tobacco product, alternative nicotine product, or electronic cigarette confiscated and forfeited to the State, to be held by the Department of Revenue for disposal by it as provided in Section 10-58 of the Tobacco Products Tax Act of 1995. The Department of Revenue must give notice of the order to the owner of the property, if the owner is known, and also to the person in whose possession the property was found if that person is known and if the person in possession is not the owner of the property. If neither the owner nor the person in possession of the property is known, the Department of Revenue must cause publication of the order to be made at least once each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing was held.

(Source: P.A. 101-2, eff. 7-1-19.)

Section 45. The Prevention of Cigarette Sales to Persons under 21 Years of Age Act is amended by changing Sections 1, 2, 5, 6, 7, 8, 10, and 20 as follows:

(720 ILCS 678/1)

Sec. 1. Short title. This Act may be cited as the Prevention of Cigarette and Electronic Cigarette Sales to Persons under 21 Years of Age Act.

(Source: P.A. 101-2, eff. 7-1-19.)

(720 ILCS 678/2)

Sec. 2. Definitions. For the purpose of this Act:

"Cigarette", when used in this Act, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except whole leaf tobacco.

"Clear and conspicuous statement" means the statement is of sufficient type size to be clearly readable by the recipient of the communication.

"Consumer" means an individual who acquires or seeks to acquire cigarettes or electronic cigarettes for personal use.

"Delivery sale" means any sale of cigarettes or electronic cigarettes to a consumer if:

(a) the consumer submits the order for such sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or

(b) the cigarettes or electronic cigarettes are delivered by use of a common carrier, private delivery service, or the mails, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or electronic cigarettes.

"Delivery service" means any person (other than a person that makes a delivery sale) who delivers to the consumer the cigarettes or electronic cigarettes sold in a delivery sale.

"Department" means the Department of Revenue.

"Electronic cigarette" means:

(1) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;

(2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or

(3) any solution or substance, whether or not it contains nicotine, intended for use in the device.

"Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar,

electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately. "Electronic cigarette" does not include: cigarettes, as defined in Section 1 of the Cigarette Tax Act; any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, a tobacco dependence product, or for other medical purposes that is marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition that is marketed and sold solely for that approved purpose; any device that meets the definition of cannabis paraphernalia under Section 1-10 of the Cannabis Regulation and Tax Act; or any cannabis product sold by a dispensing organization pursuant to the Cannabis Regulation and Tax Act or the Compassionate Use of Medical Cannabis Program Act.

"Government-issued identification" means a State driver's license, State identification card, passport, a military identification or an official naturalization or immigration document, such as an alien registration recipient card (commonly known as a "green card") or an immigrant visa.

"Mails" or "mailing" mean the shipment of cigarettes or electronic cigarettes through the United States Postal Service.

"Out-of-state sale" means a sale of cigarettes or

electronic cigarettes to a consumer located outside of this State where the consumer submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, facsimile transmission, or the Internet or other online service and where the cigarettes or electronic cigarettes are delivered by use of the mails or other delivery service.

"Person" means any individual, corporation, partnership, limited liability company, association, or other organization that engages in any for-profit or not-for-profit activities.

"Shipping package" means a container in which packs or cartons of cigarettes or electronic cigarettes are shipped in connection with a delivery sale.

"Shipping documents" means bills of lading, air bills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/5)

Sec. 5. Unlawful shipment or transportation of cigarettes or electronic cigarettes.

(a) It is unlawful for any person engaged in the business of selling cigarettes or electronic cigarettes to ship or cause to be shipped any cigarettes or electronic cigarettes unless the person shipping the cigarettes or electronic

cigarettes:

(1) is licensed as a distributor or, in the case of electronic cigarettes, a retailer, under ~~either~~ the Cigarette Tax Act, ~~or~~ the Cigarette Use Tax Act, or the Tobacco Products Tax Act of 1995; or delivers the cigarettes or electronic cigarettes to a distributor, or in the case of electronic cigarettes, a retailer, licensed under ~~either~~ the Cigarette Tax Act, ~~or~~ the Cigarette Use Tax Act, or the Tobacco Products Tax Act of 1995; or

(2) ships them to an export warehouse proprietor pursuant to Chapter 52 of the Internal Revenue Code, or an operator of a customs bonded warehouse pursuant to Section 1311 or 1555 of Title 19 of the United States Code.

For purposes of this subsection (a), a person is a licensed distributor if the person's name appears on a list of licensed distributors published by the Illinois Department of Revenue. The term cigarette has the same meaning as defined in Section 1 of the Cigarette Tax Act and Section 1 of the Cigarette Use Tax Act. Nothing in this Act prohibits a person licensed as a distributor under the Cigarette Tax Act, ~~or~~ the Cigarette Use Tax Act, or the Tobacco Products Tax Act of 1995 from shipping or causing to be shipped any cigarettes or electronic cigarettes to a registered retailer under the Retailers' Occupation Tax Act provided the cigarette tax, ~~or~~ cigarette use tax, or tobacco product tax has been paid.

In this Section, "retailer" means a person who engages in

this State in the sale of or offering for sale of electronic cigarettes for use or consumption and not for resale in any form. "Retailer" includes a retailer as defined in Section 1 of the Cigarette Tax Act and Section 10-5 of the Tobacco Products Tax Act of 1995.

(b) A common or contract carrier may transport cigarettes or electronic cigarettes to any individual person in this State only if the carrier reasonably believes such cigarettes or electronic cigarettes have been received from a person described in paragraph (a) (1). Common or contract carriers may make deliveries of cigarettes or electronic cigarettes to licensed distributors described in paragraph (a) (1) of this Section. Nothing in this subsection (b) shall be construed to prohibit a person other than a common or contract carrier from transporting not more than 1,000 cigarettes at any one time to any person in this State.

(c) A common or contract carrier may not complete the delivery of any cigarettes or electronic cigarettes to persons other than those described in paragraph (a) (1) of this Section without first obtaining from the purchaser an official written identification from any state or federal agency that displays the person's date of birth or a birth certificate that includes a reliable confirmation that the purchaser is at least 21 years of age; that the cigarettes or electronic cigarettes purchased are not intended for consumption by an individual who is younger than 21 years of age; and a written

statement signed by the purchaser that certifies the purchaser's address and that the purchaser is at least 21 years of age. The statement shall also confirm: (1) that the purchaser understands that signing another person's name to the certification is illegal; (2) that the sale of cigarettes to individuals under 21 years of age is illegal; and (3) that the purchase of cigarettes by individuals under 21 years of age is illegal under the laws of Illinois.

(d) When a person engaged in the business of selling cigarettes or electronic cigarettes ships or causes to be shipped any cigarettes or electronic cigarettes to any person in this State, other than in the cigarette or electronic cigarette manufacturer's or tobacco products manufacturer's original container or wrapping, the container or wrapping must be plainly and visibly marked with the word "cigarettes" or "electronic cigarettes".

(e) When a peace officer of this State or any duly authorized officer or employee of the Illinois Department of Public Health or Department of Revenue discovers any cigarettes or electronic cigarettes which have been or which are being shipped or transported in violation of this Section, he or she shall seize and take possession of the cigarettes or electronic cigarettes, and the cigarettes or electronic cigarettes shall be subject to a forfeiture action pursuant to the procedures provided under the Cigarette Tax Act, ~~or~~ Cigarette Use Tax Act, or Tobacco Products Tax Act of 1995.

(Source: P.A. 101-2, eff. 7-1-19.)

(720 ILCS 678/6)

Sec. 6. Prevention of delivery sales to persons under 21 years of age.

(a) No person shall make a delivery sale of cigarettes or electronic cigarettes to any individual who is under 21 years of age.

(b) Each person accepting a purchase order for a delivery sale shall comply with the provisions of this Act and all other laws of this State generally applicable to sales of cigarettes or electronic cigarettes that occur entirely within this State.

(Source: P.A. 101-2, eff. 7-1-19.)

(720 ILCS 678/7)

Sec. 7. Age verification and shipping requirements to prevent delivery sales to persons under 21 years of age.

(a) No person, other than a delivery service, shall mail, ship, or otherwise cause to be delivered a shipping package in connection with a delivery sale unless the person:

(1) prior to the first delivery sale to the prospective consumer, obtains from the prospective consumer a written certification which includes a statement signed by the prospective consumer that certifies:

(A) the prospective consumer's current address;  
and

(B) that the prospective consumer is at least the legal minimum age;

(2) informs, in writing, such prospective consumer that:

(A) the signing of another person's name to the certification described in this Section is illegal;

(B) sales of cigarettes or electronic cigarettes to individuals under 21 years of age are illegal;

(C) the purchase of cigarettes or electronic cigarettes by individuals under 21 years of age is illegal; and

(D) the name and identity of the prospective consumer may be reported to the state of the consumer's current address under the Act of October 19, 1949 (15 U.S.C. § 375, et seq.), commonly known as the Jenkins Act;

(3) makes a good faith effort to verify the date of birth of the prospective consumer provided pursuant to this Section by:

(A) comparing the date of birth against a commercially available database; or

(B) obtaining a photocopy or other image of a valid, government-issued identification stating the date of birth or age of the prospective consumer;

(4) provides to the prospective consumer a notice that meets the requirements of subsection (b);

(5) receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by a check or other written instrument in such consumer's name; however, no money order or cash payment shall be received or permitted and the seller shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a cigarette or electronic cigarette is made by credit card payment; and

(6) ensures that the shipping package is delivered to the same address as is shown on the government-issued identification or contained in the commercially available database. No delivery described under this Section shall be permitted to any post office box.

(b) The notice required under this Section shall include:

(1) a statement that cigarette and electronic cigarette sales to consumers below 21 years of age are illegal;

(2) a statement that sales of cigarettes and electronic cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (a);

(3) a statement that cigarette or electronic cigarette sales are subject to tax under Section 2 of the Cigarette Tax Act ~~(35 ILCS 130/2)~~, Section 2 of the Cigarette Use Tax Act, ~~and~~ Section 3 of the Use Tax Act, and Section 10-10 of the Tobacco Products Tax Act of 1995 and an explanation of how the correct tax has been, or is to be, paid with respect to such delivery sale.

(c) A statement meets the requirement of this Section if:

(1) the statement is clear and conspicuous;

(2) the statement is contained in a printed box set apart from the other contents of the communication;

(3) the statement is printed in bold, capital letters;

(4) the statement is printed with a degree of color contrast between the background and the printed statement that is no less than the color contrast between the background and the largest text used in the communication;  
and

(5) for any printed material delivered by electronic means, the statement appears at both the top and the bottom of the electronic mail message or both the top and the bottom of the Internet website homepage.

(d) Each person, other than a delivery service, who mails, ships, or otherwise causes to be delivered a shipping package in connection with a delivery sale shall:

(1) include as part of the shipping documents a clear and conspicuous statement stating: "Cigarettes or

Electronic Cigarettes: Illinois Law Prohibits Shipping to Individuals Under 21 and Requires the Payment of All Applicable Taxes";

(2) use a method of mailing, shipping, or delivery that requires a signature before the shipping package is released to the consumer; and

(3) ensure that the shipping package is not delivered to any post office box.

(Source: P.A. 101-2, eff. 7-1-19; revised 4-29-19.)

(720 ILCS 678/8)

Sec. 8. Registration and reporting requirements to prevent delivery sales to persons under 21 years of age.

(a) Not later than the 15th day of each month, each person making a delivery sale during the previous calendar month shall file a report with the Department containing the following information:

(1) the seller's name, trade name, and the address of such person's principal place of business and any other place of business;

(2) the name and address of the consumer to whom such delivery sale was made;

(3) the brand style or brand styles of the cigarettes or electronic cigarettes that were sold in such delivery sale;

(4) the quantity of cigarettes that were sold in such

delivery sale;

(5) an indication of whether or not the cigarettes or electronic cigarettes sold in the delivery sale bore a tax stamp evidencing payment of the tax under Section 2 of the Cigarette Tax Act ~~(35 ILCS 130/2)~~; and

(6) such other information the Department may require.

(b) Each person engaged in business within this State who makes an out-of-state sale shall, for each individual sale, submit to the appropriate tax official of the state in which the consumer is located the information required in subsection (a).

(c) Any person that satisfies the requirements of 15 U.S.C. Section 376 shall be deemed to satisfy the requirements of subsections (a) and (b).

(d) The Department is authorized to disclose to the Attorney General any information received under this title and requested by the Attorney General. The Department and the Attorney General shall share with each other the information received under this title and may share the information with other federal, State, or local agencies for purposes of enforcement of this title or the laws of the federal government or of other states.

(e) This Section shall not be construed to impose liability upon any delivery service, or officers or employees thereof, when acting within the scope of business of the delivery service.

(f) The Department may establish procedures requiring electronic transmission of the information required by this Section directly to the Department on forms prescribed and furnished by the Department.

(Source: P.A. 101-2, eff. 7-1-19.)

(720 ILCS 678/10)

Sec. 10. Violation.

(a) A person who violates subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is guilty of a Class A misdemeanor. A second or subsequent violation of subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9 is a Class 4 felony.

(b) The Department of Revenue shall impose a civil penalty not to exceed \$5,000 on any person who violates subsection (a), (b), or (c) of Section 5 or Section 6, 7, 8, or 9. The Department of Revenue shall impose a civil penalty not to exceed \$5,000 on any person engaged in the business of selling cigarettes or electronic cigarettes who ships or causes to be shipped any such cigarettes or electronic cigarettes to any person in this State in violation of subsection (d) of Section 5. Civil penalties imposed and collected by the Department shall be deposited into the Tax Compliance and Administration Fund.

(c) All cigarettes or electronic cigarettes sold or attempted to be sold in a delivery sale that does not meet the

requirements of this Act shall be forfeited to the State. All cigarettes or electronic cigarettes forfeited to this State under this Act shall be destroyed or maintained and used in an undercover capacity. The Department may, prior to any destruction of cigarettes or electronic cigarettes, permit the true holder of the trademark rights in the cigarette or electronic cigarette brand to inspect such contraband cigarettes or electronic cigarettes, in order to assist the Department in any investigation regarding such cigarettes or electronic cigarettes.

(d) Any person aggrieved by any decision of the Department of Revenue may, within 60 days after notice of that decision, protest in writing and request a hearing. The Department of Revenue shall give notice to the person of the time and place for the hearing and shall hold a hearing before it issues a final administrative decision. Absent a written protest within 60 days, the Department's decision shall become final without any further determination made or notice given.

(e) The penalties provided for in this Section are in addition to any other penalties provided for by law.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

(720 ILCS 678/20)

Sec. 20. Tip line.

(a) Not later than 120 days after January 1, 2010 (the effective date of Public Act 95-1053 ~~this amendatory Act of~~

~~the 95th General Assembly~~, the Department shall establish, publicize, and maintain a toll-free telephone number to receive information related to the sale and delivery of contraband cigarettes or electronic cigarettes.

(b) The Attorney General may pay a reward of up to \$5,000 to any person who furnishes information leading to the Department's collection of excise taxes imposed upon delivery sales which otherwise would not have been collected but for the information provided by the person.

(Source: P.A. 95-1053, eff. 1-1-10.)

Section 97. Severability. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity of that provision or application does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application.